IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3837 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DWARKA NAGAR PANCHAYAT - Petitioner(s)
Versus
GIRDHAR HARJI - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner.
MR RM PARMAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/11/2005

ORAL JUDGMENT

1.The petitioner – Dwarka Nagar Panchayat (now Dwarka Nagarpalika) has filed this petition through its Chief Officer under Article 226 & 227 of the Constitution of India praying for quashing and setting aside the award dated 17.03.1996 passed by the Labour Court, Jamnagar in Reference No. (LCJ) 386/90 (Old No. 1170/86).

2.The case of the petitioner is that the petitioner Nagar Panchayat terminated the services of the respondent who was a part-time Sweeper employed years back with the Nagar Panchayat. The Assistant Labour Commissioner made a Reference under Section 10 of the I.D. Act to Labour Court, Rajkot which was later on transferred to Jamnagar Labour Court where it was registered as Ref. No. (LCJ) 386 of 1990. The statement of claim was made by the

respondent workman wherein he did not disclose that he was already working as part time Sweeper in the Gujarat State Road Transport Corporation. The petitioner Panchayat filed its statement of defence contending inter alia that the reference was incompetent, that the Panchayat had given option to the respondent workman to select one employment either at S.T. Corporation or at Panchayat and, therefore, the respondent workman ceased to come to work from 24.12.1985 and that there was no termination amounting to retrenchment. The Labour Court passed the award awarding reinstatement with full back wages to the respondent – workman.

3.During the pendency of the present petition, the respondent – workman expired on 07.04.2004. The petitioner Panchayat has, therefore, moved Civil Application No. 8831 of 2005. The said application came to be decided by this Court on 07.10.2005 and the legal heirs of the

respondent workman were brought on record. Since the respondent – workman has died during the pendency of this petition, there is no question of reinstatement. However, the Labour Court has awarded back wages and hence, the said issue is required to be considered by this Court.

4.Mr. P.V. Hathi, learned advocate appearing for the petitioner has submitted that the Labour Court has committed an obvious error of law in ordering reinstatement of the workman as a part time Sweeper and in further ordering him to pay full back wages with costs of the reference. The findings recorded are not only based on misreading of the evidence - documentary and oral led by the parties and can be termed as perverse and unreasonable and, therefore, the said award is liable to be quashed and set aside. He has further submitted that the Labour Court has failed to appreciate the facts

which are admitted and/or established on record that the workman had come out with a claim which was false to his knowledge and had concealed the fact that he was already employed in S.T. Corporation both before the Commissioner of Labour as well as before the Labour Court when he filed the statement of claim at Exh. A and that the respondent – workman had deliberately made a false statement in examination-in-chief in his evidence at Exh. 13 that he had joined S.T. Corporation since last 2 years only. He has further submitted that though there was no evidence to show that the respondent – workman was working since last 15 years as alleged in his statement of claim and was getting only Rs. 11/- till his services were terminated, no evidence was produced by him in support of his claim. Despite this fact, the Labour Court preferred to rely upon his oral statement made in the examination-in-chief without considering the statement made by

the workman in the cross-examination. The Labour Court also failed to consider that the workman was not making true statement in his evidence on record and was otherwise unreliable.

5.Mr. Hathi has further submitted that the petitioner had proved on record that the respondent – workman was working in the S.T. Corporation from 1983 and his duty hours in the S.T. Corporation were from Morning 7 to Morning 11 during which time he could not have rendered services in the Panchayat. The petitioner had also shown by document Exh. 25 that the respondent – workman was in the S.T. Corporation since last 10 years and was getting Rs.600/- as salary. Mr. Hathi has, therefore, submitted that the Labour Court should have appreciated this fact that the respondent – workman was serving in S.T. Corporation and it was not disclosed at any time before the

Assistant Commissioner of Labour and the respondent – workman deliberately made a false statement in 1988 in his examination in chief that he was working in S.T. Corporation only since last 2 years. The Labour Court should not have awarded full back wages to the workman particularly when the respondent workman has come out with false case and has misled the Court. The respondent – workman was getting Rs. 327/- on the date on which his evidence was recorded in 1988. The petitioner had produced Exh. 25 & 26 by which it was proved that the respondent was getting Rs. 600/- in the year 1992 i.e. double the wages which he was entitled as a part-time Sweeper from the Panchayat. The petitioner has also obtained the position of the pay drawn by the respondent – workman from the S.T. Corporation and it was established that the respondent's salary was Rs.970/- in the month of March upto the month of February, 1997. Mr. Hathi has, therefore,

submitted that this is not a case where the Labour Court should have awarded any back wages to the respondent – workman.

6.The petition was admitted on 27.11.1998 and interim relief in terms of para 11 (C) was granted. Till this date, neither any reply was filed by the respondent nor the facts stated and averments made in the petition were denied by the respondent – workman.

7.Since the respondent – workman has expired, there is no question of reinstatement. Even with regard to back wages, it is established on record that the respondent – workman was gainfully employed and he was drawing salary from S.T. Corporation. Necessary evidence is also produced. The respondent workman was serving with the S.T. Corporation while he was serving part time with the petitioner Nagar Panchayat and he was drawing double salary and

wages than the salary and wages which were drawn by him from the Nagar Panchayat. Considering the entire facts and circumstances of the case, the respondent – workman is not entitled to any back wages since he was gainfully employed elsewhere till he expired.

8.In the above view of the matter, the award dated 17.03.1996 passed by the Labour Court, Jamnagar in Reference No. (LCJ) 386/90 (Old No. 1170/86) is hereby quashed and set aside. The petition is allowed. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

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